

STINSON LLP

Deborah Deitsch-Perez

Michael P. Aigen

2200 Ross Avenue, Suite 2900

Dallas, Texas 75201

Telephone: (214) 560-2201

Facsimile: (214) 560-2203

Email: deborah.deitschperez@stinson.com

Email: michael.aigen@stinson.com

Counsel for Hunter Mountain Investment Trust

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.¹

§
§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**HUNTER MOUNTAIN INVESTMENT TRUST’S SUPPLEMENT
TO RESPONSE TO MOTION TO STAY**

Hunter Mountain Investment Trust submits the following Supplement to Response to Stay in anticipation of the status conference, currently scheduled for June 12, 2024.

On January 1, 2024, Hunter Mountain Investment Trust ("HMIT") filed its Motion for Leave to File a Delaware Complaint [Dkt. No. 4000] (the "Motion for Leave"). HMIT filed the Motion for Leave, seeking permission to file a complaint in Delaware asking the court to remove James Seery as Clamant Trustee as a result of his breach of his fiduciary duties.

¹ The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] ("**Plan**"), filed by Highland Capital Management, L.P. ("**HCMLP**") became effective on August 11, 2021 (the "**Effective Date**").

HCMLP and the Highland Claimant Trust filed a motion ("Motion to Stay") asking the court to indefinitely stay all proceeding in connection with HMIT's Motion for Leave. On January 31, 2024, the court issued an Order Granting in Part Highland's Motion to Stay Contested Matter, in which the court stayed all proceedings until the court issued an order determining The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Adv. Proc. 23-03038-sgj, Dkt. No. 13], and holds a status conference with the parties in connection with the Motion for Leave to consider whether to terminate or extend the stay.

On May 24, 2024, the court issued its opinion on the Motion to Dismiss Complaint and the court scheduled a status conference pursuant to the order for June 12, 2024.

HMIT is filing this supplement to bring additional cases to the court's attention that are relevant to the standing issue. Specifically, attached is Exhibit A is a true and correct copy of the opinion issued by the Delaware Supreme Court in *Morris v. Spectra Energy Partners (DE) GP, LP*, 246 A.3d 121, 136 (Del. 2021).

Morris demonstrates how the Delaware Supreme Court has held that a standing analysis should be more flexible when a defendant controls the facts giving rise to standing. By way of example, although standing to assert derivative claims in the context of mergers typically requires equity ownership, there are exceptions. One of these exceptions includes when “the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action.” *Morris*, 246 A.3d at 129 (Del. 2021). *Morris* stands for the

proposition that strict adherence to formulaic standing on a motion to dismiss must yield where the defendant's allegedly unfair conduct attempts to destroy standing.²

Similarly, HMIT also submits a true and correct copy of the following case: *Shaev v. Wyly*, 1998 WL 13858, at *4 (Del. Ch. Jan. 6, 1998) (equitable standing allowed to challenge excessive compensation of directors because “to deny standing on these facts would insulate defendants from potential liability for their alleged misdeeds”), as Exhibit B.

² HCMLP is familiar with each of these cases submitted here as they were cited in Appellant's Reply Brief, *Hunter Mountain Investment Trust v. Highland Capital Management, L.P.*, et al., Case No. 3:23-cv-02071-E, Doc. No. 38. <https://www.kccllc.net/hcmlp/document/1934054240404000000000001>

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

Texas Bar No. 24036072

Michael P. Aigen

Texas Bar No. 24012196

2200 Ross Avenue, Suite 2900

Dallas, Texas 75201

Telephone: (214) 560-2201

Facsimile: (214) 560-2203

Email: deborah.deitschperez@stinson.com

Email: michael.aigen@stinson.com

Counsel for The Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 11, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez